

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

FILED

02 FEB 14 PM 4:31

CLERK
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICH
BY *BM*

ADMINISTRATIVE ORDER RE:)
AMENDMENT TO LOCAL) No. 02- 004
CIVIL RULE 16)
_____)

Pursuant to 28 U.S.C. § 2071 and Rule 83 of the Federal Rules of Civil Procedure, the court hereby gives notice of its consideration of amendments to Local Civil Rule 16. The proposed amendments are as follows:

(a) Amendments concerning the qualification, certification and removal of mediators serving in the court's Voluntary Facilitative Mediation (VFM) program, as set forth in Civil Rule 16.3(b). The proposed text of Civil Rule 16.3(b), as amended, is attached to this order.

(b) The creation of an advisory committee to assist the court in administering the VFM program. *See* proposed Civil Rule 16.3(c), attached to this order.

(c) The substitution of the term "evaluative mediation" for the term "Michigan mediation" wherever it appears in Civil Rule 16.

(d) The substitution of the term "case evaluator" for the term "mediator" wherever it appears in Civil Rule 16.5.

(e) The substitution of the term "ADR Administrator" for the term "ADR Clerk" wherever it appears in Civil Rule 16.

The amendments have been reviewed and tentatively approved by a majority of the active judges of this court.

NOTICE IS HEREBY GIVEN to all members of the public of their opportunity to review and comment upon the proposed amendments to Civil Rule 16. A copy of this order shall be posted in each divisional office and on the court's website. In addition, the Clerk shall provide a copy of the amendments to the Federal Bar Association, West Michigan Chapter, the State Bar of Michigan Committee on United States Courts, and the *Michigan Lawyer's Weekly*.

All comments should be in writing and must be received by the court no later than **April 1, 2002**. Comments should be addressed to:

Ronald C. Weston, Cr., Clerk
United States District Court
399 Ford Federal Building
110 Michigan, N.W.
Grand Rapids, MI 49503

The court will consider all comments before promulgating a final version of Civil Rule 16.

Dated: February 14, 2002

A handwritten signature in black ink, appearing to read "Robert Holmes Bell", written over a horizontal line.

Robert Holmes Bell
Chief Judge

(b) Qualification, certification and removal of mediators

- (i) Mediator certification fee - Each mediator is assessed an initial fee of one hundred (\$100.00) dollars for certification, and thereafter, an annual fee of twenty-five (\$25.00) dollars for re-certification. The monies are held by the Court in a separate, interest-bearing fund for training of mediators, court personnel, and judicial staff and for the education of the public and bar.
- (ii) Mediator qualifications - To qualify as a mediator, an applicant must (1) be an attorney with a minimum of ten (10) years of federal practice experience, (2) be a member in good standing of this Court's bar, and (3) have completed or agree to complete training approved by the Court and such additional training as may be required by the Court from time to time, and (5) agree to pay the Court's mediator certification and annual re-certification fees.
- (iii) Certification of Mediators. The panel is limited to fifty (50) certified mediators, or such other number as the court may determine is appropriate from time to time to serve the needs of the program and provide sufficient experience for each mediator to maintain an adequate level of expertise. The panel of certified mediators is reviewed and reconstituted annually. Persons serving as mediators at the end of a calendar year retain their certified status unless removed from the panel under the next subparagraph. Before December 31 of each year, the ADR Administrator reviews the applications submitted by prospective mediators during that year and identifies those applicants satisfying the qualifications set forth above. The ADR Administrator selects by lot or other random means qualifying persons sufficient to fill all vacancies in the mediation panel. The panel so constituted by the ADR Administrator is the list of certified mediators for the next year unless modified by the Court.
- (iv) Removal from panel of mediators - The Court periodically establishes a retention criterion, by specifying the minimum number of times that panel members must have been chosen to serve in VFM mediations in this Court during the previous calendar years. During the first week of December of each year, the ADR Administrator reviews the court's records, identifies those mediators who have not fulfilled the Court's retention criterion, and removes their names from the list of mediators for the next calendar year. A certified mediator is not subject to removal for failure to meet the retention criterion until the mediator has been a member of the panel for three calendar years.

A certified mediator who does not meet the retention criterion by reason of illness or other extraordinary cause outside the mediator's control may request in writing a waiver of this requirement. As mediators serve at the pleasure of the Court, the Court may remove a mediator from the certified list at any time for any reason.

- (v) Discretion of the Court - The Court retains discretion to waive or modify the criteria for qualification, certification or removal of any mediator in order to maintain the panel's balance in geography, practice area, or other demographic factor. Additionally, all decisions of the ADR Administrator concerning the qualification, certification or removal of a mediator or applicant are subject to review by the Court upon written application filed with the Chief Judge no later than ten days after receipt of the decision under review. The Court may refer the matter to the Court's standing VFM advisory committee for a recommendation.
 - (vi) Pro bono assignments - The Court may reasonably expect a mediator to serve in a pro bono capacity once each calendar year. Any further requests for pro bono appointment may be declined.
- (c) VFM advisory committee - A standing VFM advisory committee is created. The members of the committee are appointed by the Court from the following constituencies: certified mediators, attorney users of the VFM process, judicial officers, and the Court's ADR Administrator. The committee may take into account comments solicited from client-users of the VFM process. The committee periodically reviews the VFM program and its effectiveness and makes recommendations to the Court on such issues as the qualification, certification and removal of mediators, the demographic balance of the panel, optimal size of the panel, mediator training, changes in policy or procedures, and requests for review by applicants or mediators.